

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #3	CCRB Case #: 201510615	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 12/10/2015 9:15 PM	Location of Incident: 961 East 174th Street	Precinct: 42	18 Mo. SOL 6/10/2017	EO SOL 6/10/2017	
Date/Time CV Reported Thu, 12/10/2015 11:36 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/17/2015 11:03 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DTS David Terrell	4523	931316	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Lewellyn Alvarez	20035	949996	042 PCT
2. POF Ginina Diaz	23959	952678	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS David Terrell	Abuse: Det. David Terrell threatened § 87(2)(b) with the use of force.	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with IAB via telephone on December 10, 2016 generating log #15-38635. The complaint was received at the CCRB on December 17, 2015.

On December 10, 2015, at approximately 9:15 p.m., § 87(2)(b) was shopping at TJMaxx store at 961 East 174th Street in the Bronx. While shopping, § 87(2)(b) was having a phone conversation using his earpiece [BR 02]. A petit larceny had occurred at the store, and PO Lewellyn Alvarez, PO Victor Pena, Det. David Terrell and PO Ginina Diaz of the 42nd Precinct together with two other officers responded to the scene. The security guard of the store, § 87(2)(b) moved § 87(2)(b) shopping cart to clear the way for the officers as they were headed towards the back [BR 02]. Although it is undisputed Det. Terrell and § 87(2)(b) had a conversation after that, the initial circumstances of the exchange are in question. § 87(2)(b) alleged that he asked the security guard why he moved his shopping cart and at that moment Det. Terrell was passing by § 87(2)(b) and asked him who he was talking to [BR 02]. According to Det. Terrell, § 87(2)(b) indicated to him that § 87(2)(b) might have been assisting the perpetrators, thus Det. Terrell approached § 87(2)(b) [BR 11]. § 87(2)(b) and Det. Terrell had a back and forth exchange during which Det. Terrell allegedly said, "If you keep talking, I'm going to punch you in the face," to § 87(2)(b) [BR 02] (**Allegation A**). Then Det. Terrell directed § 87(2)(b) to step outside the store, where § 87(2)(b) called 911 to file a complaint against Det. Terrell and was transferred to IAB. In approximately 20 minutes, Det. Terrell went outside and instructed § 87(2)(b) to go back in the store. Det. Terrell and PO Diaz then left the scene and § 87(2)(b) completed his purchase. PO Alvarez and PO Pena remained in the store to execute the arrest.

Video Evidence

Security cameras video footage from the store was obtained by the undersigned. The video is silent.



201510615_20160120_1722_DM.mp4

[BR 08]



201510615_20160120_1732_DM.mp4

[BR 09]



201510615_20160120_1727_DM.mp4

[BR 10]

TJ Maxx Camera 16 [BR 08]
TJ Maxx Camera Mens-Qline [BR 09]
TJ Maxx Camera F.door [BR 10]

Mediation, Civil and Criminal Histories

- Mediation was offered to and rejected by § 87(2)(b)
- As of February 23, 2016, § 87(2)(b) has no criminal convictions [BR 14].

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 23, 2016 with regard to the incident [BR 15].

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b)
- Det. David Terrell has been a member of the service for 13 years and has eight complaints filed against him. PO Terrell has 11 prior threat of force allegations, none of which were substantiated.

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority:** Threat of arrest allegation is not being pleaded as the phrase, “I’m going to show you what the rules are” is too vague and § 87(2)(b) did not know what the phrase meant.

Allegation A –Abuse of Authority: Det. David Terrell threatened § 87(2)(b) with the use of force.

§ 87(2)(b) was interviewed at the CCRB on December 29, 2015 [BR 02]. § 87(2)(b) noted his shopping cart had been moved and he asked the security guard, § 87(2)(b) who had moved the cart. At that moment, Det. Terrell was passing by and asked § 87(2)(b) who he was talking to. § 87(2)(b) explained he was talking to the security guard. In response, Det. Terrell told § 87(2)(b) “You better not be talking to me.” § 87(2)(b) replied he did not appreciate the way Det. Terrell was talking to him and stated he knew his right and law. After that, Det. Terrell told § 87(2)(b) “If you keep talking, I’m going to punch you in the face.” § 87(2)(b) recollection of the incident and allegation were consistent throughout his previous statement to the IAB and CCRB [BR 01, 03].

§ 87(2)(b) in her telephone statement stated she observed § 87(2)(b) having a back-and-forth conversation with a tall black officer (identified by the investigation as Det. Terrell) [BR 04]. The conversation began because the security guard, § 87(2)(b) moved § 87(2)(b) shopping cart, and § 87(2)(b) expressed his dissatisfaction with that fact to § 87(2)(b). Det. Terrell was passing by and asked § 87(2)(b) why he was still talking to § 87(2)(b) since he had already explained why the shopping cart had been moved. § 87(2)(b) replied to Det. Terrell and they had a brief exchange. § 87(2)(b) did not hear the exact words of § 87(2)(b) and Det. Terrell’s conversation since she was standing approximately 50 feet away. § 87(2)(b)’s statement that § 87(2)(b) was directed to step outside corroborated that of § 87(2)(b). After § 87(2)(b) returned to the store to complete his purchase, § 87(2)(b) spoke to him. During the conversation, § 87(2)(b) related to § 87(2)(b) that Det. Terrell asked § 87(2)(b) “why the eff he was talking.”

During his phone statement to the CCRB, § 87(2)(b) stated he was instructed by the loss prevention manager to direct responding officers to the loss prevention manager office [BR 13]. § 87(2)(b) observed a shopping cart that was blocking the way to the office. § 87(2)(b) approached the cart and stated it was his. § 87(2)(b) explained why he moved

the cart and apologized to § 87(2)(b). At that moment, Det. Terrell and PO Diaz arrived to store and § 87(2)(b) directed them to the office. As Det. Terrell was passing by, § 87(2)(b) made a statement that made Det. Terrell stop and have a conversation with him. § 87(2)(b) did not hear what the nature of the statement was, nor did he hear the rest of the conversation between § 87(2)(b) and Det. Terrell. After a brief exchange, Det. Terrell instructed § 87(2)(b) to leave the store, which he did. In approximately 20 minutes, § 87(2)(b) returned and completed his purchase.

In his testimony to the CCRB, Det. Terrell confirmed he and PO Diaz responded to the TJMaxx store to assist other units in relation to petit larceny [BR 11]. Upon their arrival to the store, § 87(2)(b) informed the officers that one perpetrator was being held in the office, but he believed there was another person working with the perpetrator. § 87(2)(b) indicated that § 87(2)(b) might have been that individual. Det. Terrell approached § 87(2)(b) and inquired what he was doing. Det. Terrell noted § 87(2)(b) shopping cart was empty. § 87(2)(b) was having a phone conversation at the moment and told to the person he was talking to, “fucking cops”. Det. Terrell denied saying, “If you keep talking, I’m going to punch you in the face,” to § 87(2)(b). After a brief conversation, Det. Terrell instructed § 87(2)(b) to step outside and walked him out of the store. PO Diaz was on her way to the office and did not hear the exchange between Det. Terrell and § 87(2)(b). PO Diaz did not escort § 87(2)(b) together with Det. Terrell.

During her testimony to the CCRB, PO Diaz confirmed that she and Det. Terrell responded to the store in regards to petit larceny [BR 12]. When PO Diaz and Det. Terrell arrived to the store, § 87(2)(b) directed them to the manager’s office and stated one perpetrator was being held in the office. § 87(2)(b) related to PO Diaz and Det. Terrell that he believed there were other individuals assisting the perpetrator. PO Diaz and Det. Terrell headed to the manager’s office. On his way, Det. Terrell had a conversation with a civilian, § 87(2)(b). During that conversation, PO Diaz was holding the door of the office and did not hear the nature of the exchange between Det. Terrell and § 87(2)(b). PO Diaz did not recall whether § 87(2)(b) was having a phone conversation at the moment. PO Diaz denied saying, “If you keep talking, I’m going to punch you in the face to § 87(2)(b) nor did she hear any other officers say that. PO Diaz did not see § 87(2)(b) step out of the store.

PO Alvarez indicated he and PO Pena responded to the TJMaxx store in relation to petit larceny [BR 06]. After his arrival, PO Alvarez and his partner headed to the store office where the perpetrator was being held. PO Diaz and Det. Terrell were already present in the office. PO Alvarez did not recall Det. Terrell or PO Diaz leaving the room. PO Alvarez did not have any interaction with any other civilians other than the perpetrator, nor did he recall whether any other officers had any interactions with other civilians.

According to Camera 16 footage provided by the TJMaxx store, at 1 second, PO Ginina Diaz and Det. David Terrell enter the store through the door in the left frame [BR 08]. The security guard of the store, § 87(2)(b) walks towards the officers. At 11 seconds, § 87(2)(b) points in front of him and walks towards the right frame to the first aisle. PO Diaz and Det. Terrell follow § 87(2)(b). A female manager passes from the right to the left in the aisle. At 18 seconds, two other officers, PO Alvarez and PO Pena, enter the store through the doors in the right frame. The officers proceed to the first aisle to their right and disappear. At 1:07 minutes, § 87(2)(b) returns to the front of the

aisle from the right frame and stands by a female employee who is unpacking boxes. At 1:35 minutes, § 87(2)(b) walks from the aisle pushing a shopping cart in front of him. There is a red object in the cart. Det. Terrell and PO Diaz are following § 87(2)(b) At 1:40 minutes, § 87(2)(b) opens the door in the right frame and Det. Terrell holds the door for him. As soon as § 87(2)(b) leaves, Det. Terrell and PO Diaz return to the store. There is no audio to the video.

§ 87(2)(g)

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Squad: 3

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date